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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/800,826	03/15/2004	Seok-jun Won	5649-837DV	1388
20792	7590	11/30/2005	EXAMINER	
MYERS BIGEL SIBLEY & SAJOVEC			GRAYBILL, DAVID E	
PO BOX 37428			ART UNIT	
RALEIGH, NC 27627			PAPER NUMBER	
			2822	

DATE MAILED: 11/30/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	10/800,826	WON ET AL.	
	<b>Examiner</b>	<b>Art Unit</b>	
	David E. Graybill	2822	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 1 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) ☒ Responsive to communication(s) filed on 15 March 2004.
- 2a) ☐ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) ☒ Claim(s) 29-50 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☐ Claim(s) \_\_\_\_\_ is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☒ Claim(s) 29-50 are subject to restriction and/or election requirement.

#### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \* c) ☒ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

Restriction to one of the following inventions is required under 35

U.S.C. 121:

- I. Claims 29-31, drawn to a product, classified in class 428, subclass 540.
- II. Claims 32-34, drawn to a product, classified in class 257, subclass 746.
- III. Claims 35-42, drawn to a process, classified in class 427, subclass 457.
- IV. Claims 43-50, drawn to a process, classified in class 438, subclass 652.

The inventions are distinct, each from the other because of the following reasons:

Inventions I and II are related as combination and subcombination. Inventions in this relationship are distinct if it can be shown that (1) the combination as claimed does not require the particulars of the subcombination as claimed for patentability, and (2) that the subcombination has utility by itself or in other combinations (MPEP § 806.05(c)). In the instant case, the combination as claimed does not require the particulars of the subcombination as claimed because to both the subcombination and combination are presented and assume claims d to be patentable, and the omission of details of the claimed subcombination in the

combination claim is evidence that the patentability of the combination does not rely on the details of the specific subcombination.

The subcombination has separate utility such as for use in other than an integrated circuit device.

Inventions I and III are related as process of making and product made. The inventions are distinct if either or both of the following can be shown: (1) that the process as claimed can be used to make another and materially different product or (2) that the product as claimed can be made by another and materially different process (MPEP § 806.05(f)). In the instant case, the process as claimed can be used to make another and materially different product such as a product not having a stratified oxygen concentration. To further clarify, because the transitional claim language "comprising" is inclusive of additional process steps other than the particular recited steps, the scope of the process claims encompasses a step of changing the oxygen concentration to make a final product not having a stratified oxygen concentration.

Inventions I and IV are related as product and process of use. The inventions can be shown to be distinct if either or both of the following can be shown: (1) the process for using the product as claimed can be practiced with another materially different product or (2) the product as claimed can be used in a materially different process of using that product (MPEP

§ 806.05(h)). In the instant case, the product as claimed can be used in a materially different process of using that product such as a process having no step of forming a lower electrode.

Inventions II and III are related as combination and process of making a subcombination. Inventions in this relationship are distinct if it can be shown that (1) the combination as claimed does not require the particulars of the subcombination made by the process of making the subcombination as claimed for patentability, and (2) that the subcombination made by the process of making the subcombination as claimed has utility by itself or in other combinations (MPEP § 806.05(c)). In the instant case, the combination as claimed does not require the particulars of the subcombination made by the process of making the subcombination as claimed because claims to both the subcombination made by the process of making the subcombination as claimed and combination are presented and assume to be patentable, and the omission of details of the claimed subcombination made by the process of making the subcombination as claimed in the combination claim is evidence that the patentability of the combination does not rely on the details of the specific subcombination made by the process of making the subcombination as claimed.

Inventions II and IV are related as process of making and product made. The inventions are distinct if either or both of the following can be

shown: (1) that the process as claimed can be used to make another and materially different product or (2) that the product as claimed can be made by another and materially different process (MPEP § 806.05(f)). In the instant case, the process as claimed can be used to make another and materially different product such as a product not having a stratified oxygen concentration. To further clarify, because the transitional claim language "comprising" is inclusive of additional process steps other than the particular recited steps, the scope of the process claims encompasses a step of changing the oxygen concentration to make a final product not having a stratified oxygen concentration.

Inventions III and IV are related as process for making the product and process for using the product. The inventions can be shown to be distinct if either or both of the following can be shown: (1) the process for making the product as claimed can be practiced to make a different product than the product used by the process for using the product or (2) the process for using the product as claimed can be practiced with a different product than the product made by the process for making the product ((MPEP § 806.05(i)). In the instant case, the process for making the product as claimed can be practiced to make a different product than the product used by the process for using the product such as a product not having a stratified oxygen concentration. To further clarify, because the

transitional claim language "comprising" is inclusive of additional process steps other than the particular recited steps, the scope of the process claims encompasses a step of changing the oxygen concentration to make a final product not having a stratified oxygen concentration.

Because these inventions are distinct for the reasons given above and have acquired a separate status in the art as shown by their different classification, restriction for examination purposes as indicated is proper.

Because these inventions are distinct for the reasons given above and have acquired a separate status in the art because of their recognized divergent subject matter, restriction for examination purposes as indicated is proper.

Because these inventions are distinct for the reasons given above and the search required for any one of Groups I-IV is not required for any other of Groups I-IV, restriction for examination purposes as indicated is proper.

Applicant is advised that the reply to this requirement to be complete must include an election of the invention to be examined even though the requirement be traversed (37 CFR 1.143).

Applicant is reminded that upon the cancellation of claims to a non-elected invention, the inventorship must be amended in compliance with 37 CFR 1.48(b) if one or more of the currently named inventors is no longer an inventor of at least one claim remaining in the application. Any amendment

of inventorship must be accompanied by a request under 37 CFR 1.48(b) and by the fee required under 37 CFR 1.17(i).

**For information on the status of this application applicant should check PAIR:**

Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

**Alternatively, applicant may contact the File Information Unit at (703) 308-2733. Telephone status inquiries should not be directed to the examiner. See MPEP 1730VIC, MPEP 203.08 and MPEP 102.**

Any other telephone inquiry concerning this communication or earlier communications from the examiner should be directed to David E. Graybill at (571) 272-1930. Regular office hours: Monday through Friday, 8:30 a.m. to 6:00 p.m.  
The fax phone number for group 2800 is (571) 273-8300.



David E. Graybill  
Primary Examiner  
Art Unit 2822

D.G.  
25-Nov-05